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CORRESPONDENCE AND RESOLUTIONS

IN REGARD TO THE

CONFIRMATION OF THE AWARD OF THE ARBITRATORS

IN REFERENCE TO THE

NORTH-WEST BOUNDARIES OF THE PROVINCE OF ONTARIO.

TORONTO, 23rd September, 1879.

SIR,—I am directed by His Honour the Lieutenant-Governor to call the attention of the Government of Canada to my despatch dated 31st December last, respecting the legislation needed to put beyond dispute in civil and criminal cases any question as to the western and northern limits of Ontario.

The measure therein referred to as intended to be submitted to the Legislature of Ontario, was, as you are aware, passed at its last session; but no like Act was passed by the Parliament of Canada at its recent session.

I am to remind you that a report on the subject, by a Committee of the Honourable the Privy Council, was approved by His Excellency the Governor-General in Council on the 12th November, 1874, and that in this Report it was set forth that, in a memorandum dated on that day, the Premier of the Dominion recommended concurrence in a proposition made by the Government of Ontario, to determine by means of a reference the northern and western boundaries of that Province relatively to the rest of the Dominion; that the Ontario Government having named the Honourable William Buell Richards, Chief Justice of Ontario, as one of the referees, the Premier submitted the name of the Honourable Samuel Allan Wilmot, formerly Lieutenant-Governor of the Province of New Brunswick, to act in conjunction with him, and advised that authority should be given them to agree upon a third person, not being a resident of Canada, and that the determination of a majority of such three referees should be final and conclusive upon the limits to be taken as and for such boundaries respectively, and by the Report of the Committee of the Privy Council it was recommended that the Dominion should agree to concurrent action with the Province of Ontario, in obtaining such legislation as might be necessary for giving binding effect to the conclusion which should be arrived at, and for establishing the northern and western boundaries of the Province of Ontario in accordance with the award.

A further Report of a Committee of the Honourable the Privy Council was approved by His Excellency the Governor-General in Council on the 31st July, 1878, whereby it was stated that the Committee of Council had under consideration the subject of the northern and western boundaries of the Province of Ontario, which under previous

Orders in Council had been referred to the Honourable W. B. Richards, then Chief Justice of Ontario, named as referee on behalf of that Province, but who was subsequently replaced by the then Chief Justice, the Honourable R. A. Harrison, and to the Honourable Sir Francis Hincks, who had been named on behalf of the Dominion, and that subsequently to the action taken under the Order in Council of 12th November, 1874, it had been mutually agreed between the Governments of the Dominion and Ontario that the Right Honourable Sir Edward Thornton should be selected as third referee and the Committee recommended that such selection should be confirmed by Minute of Council, and that the determination of such three referees should be final and conclusive upon the limits to be taken as and for such boundaries respectively.

Corresponding Orders in Council were made by this Province.

I am directed to respectfully suggest that an award having, on the 3rd August, 1878, been duly made in pursuance of the Reference, it is just that there should be no further delay in formally recognizing the award as having definitely settled the matters submitted to the arbitrators.

The Government of Ontario on its part acquiesced in the award, not because it was believed to have accorded to this Province all that was claimed on its behalf, or all that the Province might within its strict legal rights have had awarded to it, but because the tribunal appointed jointly by the two Governments was one to whose competency and character no one could take exception, and because according to the judgment of the people of Ontario neither party to the arbitration could consistently with good faith refuse to abide by the decision.

The Government of Ontario does not doubt that the Government and Parliament of Canada will ultimately take the same view, and I have respectfully to represent that the delay in announcing the acquiescence of the Dominion authorities, and in giving full effect otherwise to the award, has been embarrassing and injurious.

The present Government of Canada has already been made aware that before the arbitrators met, an exhaustive collection had been made by the Governments of Canada and Ontario severally of all the facts, documents and evidence bearing upon the controversy; that everything material had been printed and in a form which facilitated to the greatest practical degree the full and prompt examination of the question at issue; that cases had been prepared on both sides, containing a summary of the respective claims and the reasons therefor; that these cases also had been printed; and that the whole matter had been argued before the arbitrators by counsel.

With respect to the arbitrators it is manifest that no three persons could have been selected whose judgment would be entitled, in such a case, to more unqualified respect, than that of the three arbitrators appointed. Sir Francis Hincks, as a Canadian publicist and statesman, is acknowledged to have few equals in shrewdness, industry or ripe experience; the late Chief Justice Harrison was a lawyer of the first rank, and a judge whose method of reasoning was always distinguished for its practical and common sense character; and Sir Edward Thornton, Her Majesty's Minister at Washington, brought to the consideration of the case, not only the aid of very high abilities, but the absolutely independent judgment of one who could have no partialities or inclinations in favour of either side.

If the merits of the award have been considered by the Government of Canada, they will have observed certain preliminary things in connection with the question which were and are beyond controversy. Amongst these are the facts that Ontario is entitled to the same limits as Upper Canada had, whatever these were; that these limits embrace so much of the British territory, west of the division line between Ontario and Quebec, as belonged to France before the cession of 1763, and (what is the same thing), so much as belonged to the Province of Canada before Confederation, or (in other words), so much as belonged to the Dominion before its purchase of the rights of the Hudson's Bay Company, and that the single question which the arbitrators had to consider was, what territory Canada had on the Ontario side of the division line before the recent purchase from the Hudson's Bay Company had been made.

It must further have been noticed that the territory awarded to Ontario is considerably less than had been officially claimed and insisted upon by the Province of Canada

before Confederation, and by the Dominion afterwards, and considerably less on the west than, according to the legal opinion of Chief Justice Draper in 1857, Canada was clearly entitled to.

Further, the territory so awarded to Ontario is less than was comprised in Upper Canada, according to the true intent and meaning of the Quebec Act (1774), as shewn by its recitals and by its known objects and its history, including the proceedings thereon in the House of Commons, as reported in "Cavendish's Debates," and as set forth in the letter of the Right Honourable Edmund Burke, dated 2nd August, 1774, to his constituents, the Province of New York, whose agent he was at the time. All these documents are to be found amongst the printed documents already mentioned.

The terms of the Royal Commissions assigning or defining the boundaries of Canada and Upper Canada respectively, appear in the same book; and a reference to them will have shewn to the Government of Canada that the territory awarded to Ontario is less than was given to the Province by the express terms of the Royal Commission (27th December, 1774) which, immediately after the passing of the Quebec Act, was issued to Sir Guy Carleton, as Captain-General and Governor-in-Chief of the Province; and also by the express terms of the Commission to his successor, Sir Frederick Haldimand; that the Commission to Sir Guy Carleton, after the Treaty of Paris of 1793, expressly gives as one of the boundaries of the Province a line to the Lake of the Woods, thence through said Lake to the most north-west point thereof (as the arbitrators have done), and from thence in a due west course to the river Mississippi. The arbitrators have not given to the Province any territory west of the Lake of the Woods.

The Government of Canada must also have observed that a paper was presented to Parliament previous to the passing of the Constitutional Act of 1791, describing the line which it was proposed to draw in order to divide the then Province of Quebec into two Provinces—that this line is described as drawn from the head of Lake Temiscaming due north until it should strike the boundary line of Hudson's Bay, including, as the paper stated, all the territory to the westward and south of the said line to the extent of the country commonly known by the name of Canada; that on the 24th August, 1791, an Order in Council referred to this paper and divided the Province accordingly; that the subsequent proclamation of General Clarke, in the same year, contained a description in the same words; that the Royal Commissions to Lord Dorchester and subsequent Governors-General to and including the Commission to Lord Gosford in 1835, described the division line between Upper and Lower Canada in the same way, as extending to the boundary line of Hudson's Bay; and that the Commissions from that to the Earl of Durham in 1838, to the Commission to Lord Elgin in 1846, as well as various other Royal Commissions, described the line of division as striking the shore of Hudson's Bay.

It is also undenied and undeniable that the Province of Upper Canada, for a period long antecedent to its union with Lower Canada, acted whenever there was occasion on the assumption that the boundaries of the Province were those so assigned by the Royal Commissions, and issued writs into the territory west of the line 89° 9½′ (which was the line insisted on by the Dominion after the purchase from the Hudson's Bay Company.)

It is another significant fact of the same kind that the Province of Canada, as far back as 1850, procured from the Indians the surrender of their rights in the same territory west of that line and from time to time thereafter made grants in the Queen's name of land west of the same line.

In truth, so far as the western boundary is concerned, it was proved to demonstration that the north-west angle of the Lake of the Woods was the most easterly limit that could be assigned to the Province under any interpretation of the evidence.

There is an old decision of a Court in Lower Canada in what is called the Reinhardt case in favour of a more easterly line, viz.. 89° 9½′ (the meridian of the confluence of the Ohio and Mississippi Rivers), but on an examination of the case, of which a full report is in print and accessible, it will be found that the decision was come to without the Court being aware of the terms of the Royal Commissions to the Governors hereinbefore mentioned, and without attention having been called to the historical facts which are referred to in the recitals of the Quebec Act, and which give significance to those recitals as bearing on the question of boundary; nor was the Court in possession of the evidence of

intention which is afforded by the debate on the Bill and by other means now known and relied upon as demonstrating the other construction. De Reinhardt, though clearly guilty, was not executed, and the only known or supposed reason for pardoning him is that the British Government were advised that the conclusion of the Court on the point in question was not maintainable. This is stated in an official paper on the part of the late Province of Canada.

Only one of the Royal Commissions hereinbefore mentioned, so far as is known, was in print before the recent investigations, and when copies of these Commissions were procured and examined for the purposes of the arbitration it became apparent that these Commissions alone set at rest all possible question that the easterly boundary of the Province included the Lake of the Woods; and that the northerly boundary extended to the shore of Hudson's Bay on the east, and to or beyond the most north-west angle of the Lake of the Woods on the west. How far north of these points our northerly boundary was to be found was a fair subject of controversy, but the territory north of these two points is of comparatively little value. It is to be observed that the line of the English and Albany Rivers, which was fixed upon by the arbitrators as the northerly boundary, is not far north of a straight line connecting the two points mentioned, and has the advantage of presenting an almost unbroken waterline; that it is thus a natural and convenient boundary, and that it gives to Ontario a less aggregate quantity of territory in the north than is assigned to Canada in some of the maps of the Hudson's Bay Company itself, and gives to the Province a less northerly boundary than the Company in 1701, thirty years after the charter, was content with and unsuccessfully endeavoured to restrict Canada to.

But if it were far less clear than it is that the award does not give Ontario more territory than the Province was entitled to, and if the reasons which justify the conclusions of the arbitrators were far less clear and strong than they are, it is respectfully submitted that the award demands the active acquiescence and recognition of the parties to the reference. The question of boundaries was in controversy, it was referred by mutual consent to the distinguished gentlemen named, they have made their award, and the fact is conclusive in regard to all questions on the subject.

I am further to remind the Government of Canada that the settlement of the controversy, as well as the explorations for railway and other purposes have drawn public attention to the territory north and west of Lake Superior, that settlement therein is proceeding, that various enterprises are establishing themselves, that speculation is likely to be directed to this region, and that various causes are at work favourable to an influx of population, both of a settled and floating character.

In view of these considerations the Government of Ontario trusts that the Government of Canada will recognize the propriety of announcing without further delay their intention to submit to Parliament, next session, a bill declaring the boundary established by the arbitrators to be the true northerly and westerly boundaries of Ontario, and to use the influence of the Government to have the measure accepted by both Houses, and assented to by His Excellency the Governor-General.

I am to renew the request contained in a former despatch that the Government of Canada would be pleased at once to forward to this Government the maps, field notes, &c., &c., relative to so much of the territory assigned to Ontario as has been surveyed under the authority of the Dominion.

I have the honour to be,

Sir,

Your obedient servant,

I. R. ECKHART,

Assistant Secretary.

The Honourable the Secretary of State,
(Canada), Ottawa.

DEPARTMENT OF THE SECRETARY OF STATE,
OTTAWA, 25th September, 1879.

SIR.—I have the honour to acknowledge the receipt of your communication of the 23rd inst., with reference to the question as to the northern and western limits of the Province of Ontario; and to inform you that the subject will be submitted to His Excellency the Governor-General.

I have the honour to be,

Sir,

Your most obedient servant,

EDOUARD J. LANGEVIN,
Under Secretary of State.

The Honourable the Provincial Secretary of Ontario,
Toronto.

The following is amended form of the proposed Resolution to be moved by the Attorney-General, on the subject of the Boundaries Award:—

That by an agreement made between the Government of *Canada* and the Government of *Ontario*, it was decided that, subject to the approval of the Parliament of *Canada* and the Legislature of *Ontario*, the questions which had arisen concerning the northerly and westerly boundaries of the Province of *Ontario* should be determined by arbitration; and that by Orders in Council, passed by the respective Governments, it was declared, that the determination of the arbitrators appointed to make such award should be "final and conclusive."

That in accordance with the agreement entered into by the respective Governments, the Right Honourable Sir *Edward Thornton*, Her Majesty's Minister at *Washington*, the late Hon. *R. A. Harrison*, Chief Justice of *Ontario*, and the Honourable Sir *Francis Hincks*, were agreed upon by Orders in Council of the respective Government, as arbitrators to determine the northerly and westerly boundaries of the Province of *Ontario*.

That on the 3rd day of August, 1878, the said arbitrators delivered their award wherein they declared and determined what are the northerly and westerly boundaries of the Province of *Ontario*.

That in a despatch dated 31st December, 1878, from His Honour the Lieutenant-Governor of *Ontario*, to the Secretary of State for *Canada*, His Honour intimated to the Government of *Canada*, that during the approaching session of the Legislature a measure would be introduced "to give effect by way of declaratory enactment or otherwise, to the award made by the arbitrators to determine the northerly and westerly boundaries of the Province of *Ontario*;" and that His Honour, in the same despatch, also stated he would be glad to learn that such legislation as might be necessary to give effect to the award would be had at *Ottawa* in the next session of the Parliament of *Canada*.

That in a despatch dated 8th January, 1879, the Government of *Canada* acknowledged the receipt of the despatch last mentioned, and stated that the same would not

fail to receive all due consideration, and that no intimation was given, in reply to His Honour's communication, that the Government of *Canada* would refuse to be bound by the award of the Arbitrators, or to submit to the Parliament of *Canada* a measure giving effect thereto.

That by an Act of the last session, the Legislature of *Ontario* did consent that the boundaries of the Province, as determined by the said award, should be declared to be the northerly and westerly boundaries of the Province of *Ontario*, and by a further Act made provision for the administration of justice in the northerly and westerly parts of *Ontario*.

That on the 16th January, 1869, the Government of the Dominion of *Canada*, through its members and representatives, contended before Her Majesty's Imperial Government, that the western boundary "extended to and included the country between the *Lake of the Woods* and *Red River*," and that the northern boundary included "the whole region of *Hudson's Bay*."

That the boundaries then claimed by the Government of the Dominion, on behalf of *Canada*, as against the pretensions of the *Hudson's Bay* Company, would, on the same grounds, be the boundaries of the Province of *Ontario*, and would give to *Ontario* a territory vastly in excess of that embraced in the award of the arbitrators.

That by an Order in Council, approved on the 28th November, 1871, the constitutional advisers of His Excellency the Governor-General of *Canada*, obtained the sanction of the Crown to the statement that "it was of much consequence that the ascertaining and fixing on the ground of the boundary line in question, should be, as far as possible, expedited;" that, by another Order in Council, approved on the 9th April, 1872, His Excellency's advisers obtained the assent of the Crown to the opinion that both Governments would "feel it their duty to settle without delay, upon some proper mode of determining in an authoritative manner, the true position of such boundary; "that by another Order in Council, approved on the 7th November, 1872, His Excellency's advisers obtained the further sanction of the Crown to the statement that "the importance of obtaining an authoritative decision as to the limits to the north and to the west of the Province of *Ontario* had already been affirmed by a Minute in Council, and "that the establishment of Criminal and Civil Jurisdiction and the necessity of meeting the demands of settlers and miners for the acquisition of titles to lands, combined to render such a decision indispensable.

That although so long since as the 12th November, 1874, and as the result of protracted negotiations, the Government of *Canada*, by Order in Council, consented to concur in the proposition of the Governnent of *Ontario* to determine the northern and western boundaries of *Ontario* by means of a reference; and although information was from time to time given to Parliament by the Government of *Canada* of the progress of the arrangements for such reference, no action was taken, nor was any effort made by or in the Parliament of *Canada*, previous to the award keing given, to arrest or prevent the reference agreed upon by the respective Governments of *Canada* and *Ontario;* that in May, 1878, the Parliament of *Canada* granted $15,000 to defray the expenses of the *Ontario* Boundary Commission.

That this House regrets that, notwithstanding the joint and concurrent action of the respective Governments in the premises, and the unanimous award of the arbitrators, the Government of *Canada* has hitherto failed to recognize the validity of the said award, and that no legislation has been submitted to Parliament by the Government of *Canada* for the purpose of confirming the said award.

That, nevertheless it is, in the opinion of this House, the duty of the Government of *Ontario* to take such steps as may be necessary to provide for the due administration of

justice in the northerly and westerly parts of *Ontaria*, and that this House believes it to be of the highest importance to the interests of this Province, and to the securing of the peace, order and good government of the said northerly and westerly parts of *Ontario*, that the rights of this Province as determined and declared by the award of the arbitrators appointed by the concurrent agreement and action of the Governments of *Canada* and *Ontario* should be firmly maintained.

That this House will at all times gives its cordial support to the assertion by the Government of *Ontario*, of the just claims and rights of this Province, and to all necessary or proper measures to vindicate such just claims and rights, and to sustain the award of the arbitrators by which the northerly and westerly boundaries of this Province have been determined.

The following is the vote in the Ontario Legislature upon the above resolutions on March 3rd, 1880:—

YEAS:

Messieurs

Appleby,
Awrey,
Badgerow,
Ballantyne,
Baxter,
Bell,
Bishop,
Blezard,
Boulter,
Broder,
Calvin,
Cascaden,
Chisholm,
Creighton,
Crooks,
Dryden,
Field,
Fraser,
Freeman,
French,
Gibson (Huron),
Gibson (Hamilton),
Graham,
Hardy,
Hawley,
Hay,
Jelly,
Kerr,
Laidlaw,
Lauder,
Livingston,
Long,
Lyon,
McCraney,
McKim,
McLaughlin,
McMahon,
Mack,
Meredith,
Metcalfe,
Monk,
Morgan,
Morris,
Mowat,
Nairn,
Near,
Neelon,
Pardee.
Parkhill,
Paxton,
Richardson,
Robinson(Cardw'l),
Ross,
Sinclair,
Springer,
Striker,
Tooley,
Waters,
Watterworth,
White.
Widdifield,
Wigle,
Wood
Young—64

NAYS:

Messieur

Miller—1.